

## Department of Energy

## § 473.22

(c) Justify research and development activities on an advanced automobile propulsion system abandoned by any person because of a lack of mass production potential by presenting information showing a significant intervening technological advance, promising conceptual innovation, or other special consideration;

(d) Provide—

(1) An assurance that the amount of funds to be expended for research and development of advanced automobile propulsion systems during the initial annual funding period will exceed the amount of funds expended, if any, during the previous year for the same purpose by at least the amount of the grant, cooperative agreement, or contract being sought; and

(2) An assurance that the level of research and development effort on advanced automobile propulsion systems in the initial annual funding period will not be decreased in future annual funding periods.

(e) Provide to the extent possible—

(1) An assurance that the time period for completing research and development of the advanced automobile propulsion is likely to be shorter as a result of a grant, cooperative agreement, or contract; and

(2) The estimated delay, if any, which is likely to occur if the application for a grant, cooperative agreement, or contract is denied.

### § 473.11 Submission of applicant's information.

(a) An applicant submitting an unsolicited proposal to conduct research and development to be funded by a grant, cooperative agreement, or contract under the Act shall include the information required under § 473.10 in the unsolicited proposal document filed under the assistance or procurement regulations of the DOE or other Federal agency which funds the proposed research and development under the Act.

(b) In responding to a solicitation for a proposal to conduct research and development funded by a grant, cooperative agreement, or contract under the Act, the applicant shall include the information required under § 473.10 in the proposal.

(c) Information submitted under § 473.10 of these regulations shall be certified in writing as complete and accurate by the applicant, and if the applicant is not an individual, the chief executive officer of the applicant or his authorized designee shall sign the certification.

### § 473.20 Public notice and opportunity to object.

(a) In compliance with paragraph (b) of this section and unless provisions of paragraph (c) of this section apply, the manager shall cause to be published in the Commerce Business Daily a statement describing the unsolicited proposal, solicitation, DOE project, or agency project, as appropriate, inviting any interested person to submit a written objection, with supporting information at an appropriate address on or before 30 days from the date of publication, if the person believes that the research and development to be performed does not comply with standards and criteria of § 473.30.

(b) Except as paragraph (c) of this section applies, the manager shall comply with the requirements of paragraph (a) of this section—

(1) Upon receipt of an unsolicited proposal from an applicant;

(2) In any notice of availability of a solicitation;

(3) Prior to beginning a DOE project; or

(4) Prior to beginning an agency project.

(c) Without publishing a notice under paragraph (a) of this section, the manager may reject an unsolicited proposal that does not comply with these regulations or any other generally applicable requirements.

### § 473.21 Supplemental information and rebuttal.

The manager may request additional information from an applicant or any interested person who files an objection under § 473.20.

### § 473.22 Initial review by manager.

(a) Upon expiration of the time for filing information under these regulations, the manager shall—

(1) Review the proposed research and development to be performed under

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grant, under cooperative agreement, under contract, as a DOE project, or as an agency project and any other pertinent information received under these regulations or otherwise available; and

(2) Initially determine whether the research and development reviewed under paragraph (a)(1) of this section complies with the standards and criteria of § 473.30.

(b) A manager who makes a negative determination under paragraph (a)(2) of this section shall inform the applicant and any interested person who objected of the decision in writing with a brief statement of supporting reasons.

(c) A manager who initially determines that research and development reviewed under this section complies with the standards and criteria of § 473.30 shall cause an interagency review panel to be convened under § 473.23.

#### § 473.23 Interagency review panel.

(a) The interagency review panel shall consist of—

(1) A head designated by the Federal agency that employs the manager;

(2) A representative of the DOE if the manager is not an employee of the DOE; and

(3) A representative of any other Federal agency deemed appropriate by the Federal agency that employs the manager.

(b) The interagency review panel shall—

(1) Review the research and development to be performed and consider the information presented by the applicant, in the case of a grant, cooperative agreement, or contract, and by any interested person who filed a statement of objection;

(2) Make a recommendation with a supporting statement of findings to the manager as to whether the research and development to be performed complies with the standards and criteria of § 473.30; and

(3) Operate by majority vote with the head of the panel casting the decisive vote in the event of a tie.

#### § 473.24 Final action and certification by manager.

(a) Upon consideration of the recommendation of the interagency re-

view panel and other pertinent information, the manager—

(1) Shall determine whether the research and development to be performed complies with the standards and criteria of § 473.30;

(2) Shall obtain the concurrence of the DOE if the manager is not an employee of the DOE;

(3) Shall, in the event of a negative determination under this section, advise the applicant, in the case of a grant, cooperative agreement, or contract, and any interested person who filed a statement of objection; and

(4) Shall, in the event of an affirmative determination under this section, prepare a certification—

(i) Explaining the determination;

(ii) Discussing any allegedly related or comparable industrial research and development considered and deemed to be an inadequate basis for not certifying the grant or contract;

(iii) Discussing issues regarding cost sharing and patent rights related to the standards and criteria of § 473.30 of these regulations; and

(iv) Discussing any other relevant issue.

(b) After complying with paragraph (a) of this section, the manager shall sign the certification and distribute copies to the applicant, if any, and any interested person who filed a statement of objections—

(1) Immediately in the case of a DOE or agency project; and

(2) After the agreement has been negotiated in the case of a grant, cooperative agreement, or contract.

#### § 473.25 Reviewability of certification.

Any certification issued under these rules is—

(a) Subject to disclosure under 5 U.S.C. 552 (1970) and section 17 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, 42 U.S.C. 5918 (1970);

(b) Subject neither to judicial review nor to the provisions of 5 U.S.C. 551–559 (1970), except as provided under paragraph (a) of this section; and

(c) Available to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.